



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 27, 2014

Mr. Gregory Pratt
Chicago Tribune
18450 Crossing Drive, Suite A
Tinley Park, Illinois 60487

Mr. Thomas M. Melody
Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606

RE: FOIA Request for Review - 2013 PAC 25627

Dear Mr. Pratt and Mr. Melody:

This determination letter is issued pursuant to section 9.5(f) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(f) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Village of Tinley Park (Village) improperly denied Mr. Gregory Pratt's June 26, 2013, FOIA request.

BACKGROUND

On that date, Mr. Pratt, on behalf of the *Chicago Tribune*, submitted a FOIA request to the Village seeking "any and all police reports, incident reports and narratives involving Eric Noonan[.]"¹ On July 3, 2013, the Village denied the request citing section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c)) (West 2012)) and an unspecified "federal law."² Mr. Pratt submitted a complete Request for Review to this office on August 14, 2013. On August 15, 2013, this office forwarded a copy of the Request for Review to the Village and asked it to provide unredacted copies of the withheld records and a detailed explanation of the factual and legal basis for the asserted exemptions. On August 26, 2013, counsel for the Village supplied copies of the requested records and a letter in support of the Village's denial under section

¹E-mail from Gregory Pratt, *Chicago Tribune*, to Laura Godette (June 26, 2013).

²Letter from Laura Godette, Deputy Clerk, Freedom of Information Officer, Village of Tinley Park, to Gregory Pratt, *Chicago Tribune* (July 3, 2013).

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7(1)(c). In the letter, counsel also asserted that the responsive records were exempt from disclosure under sections 7(1)(a), 7(1)(b), and 7(1)(n) of FOIA (5 ILCS 140/7(1)(a), (1)(b), (1)(n) (West 2012)). A copy of the Village's response was provided to Mr. Pratt; on September 9, 2013, Mr. Pratt replied to the Village's response.

DETERMINATION

All public records in the possession or custody of a public body are presumed to be open to inspection and copying (5 ILCS 140/1.2 (West 2012)), and exemptions to disclosure are to be narrowly construed. *Lieber v. Board of Trustees of Southern Illinois Univ.*, 176 Ill. 2d 401, 408 (1997); *see also* 5 ILCS 140/1 (West 2012). Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2 (West 2012).

Section 7(1)(c) of FOIA

Section 7(1)(c) of FOIA (5 ILCS 140/7(1)(c) (West 2012)) exempts from disclosure:

[p]ersonal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information.
'Unwarranted invasion of personal privacy' means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. *The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy.* (Emphasis added.)

The Village withheld three police incident reports and one incident dispatch detail report under section 7(1)(c). The Village's response to this office notes that two of the incident reports concern domestic incidents. The third report involves a juvenile matter.³

³Letter from Thomas M. Melody, Klein, Thorpe and Jenkins, Ltd., to Rob Olmstead, Assistant Attorney General, Public Access Bureau (August 26, 2013).

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2011 Incident Report

One of the incident reports details the December 4, 2011, arrest of Mr. Noonan and an accompanying charge of domestic battery against him. Section 2.15(a) of FOIA (5 ILCS 140/2.15(a) (West 2012)) generally requires disclosure of the following arrest information:

(i) information that identifies the individual, including the name, age, address, and photograph, when and if available; (ii) information detailing any charges relating to the arrest; (iii) the time and location of the arrest; (iv) the name of the investigating or arresting law enforcement agency; (v) if the individual is incarcerated, the amount of any bail or bond; and (vi) if the individual is incarcerated, the time and date that the individual was received into, discharged from, or transferred from the arresting agency's custody.

The requirements of section 2.15(a) of FOIA demonstrate that the General Assembly recognizes a strong public interest in the disclosure of information concerning arrests that outweighs an arrestee's right to privacy. Ill Att'y Gen. Pub. Acc. Op. No. 11-001, issued February 18, 2011. Because Mr. Noonan was arrested for a criminal offense, the information referenced in subsection (i) and (ii) of section 2.15(a) of FOIA relating to his arrest must be disclosed. Information referenced in the remaining subsections of section 2.15(a) may be withheld, but only if its "disclosure would: (i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement agency; (ii) endanger the life or physical safety of law enforcement or correctional personnel or any other person; or (iii) compromise the security of any correctional facility." 5 ILCS 140/2.15(c) (West 2012). The Village has not asserted that disclosure of the report would result in such consequences. Accordingly, the categories of information listed in section 2.15(a) of FOIA must be disclosed to Mr. Pratt.

Further, the Village has not demonstrated that disclosure of any other information contained in the incident report would constitute an unwarranted invasion of Mr. Noonan's privacy as contemplated in section 7(1)(c) of FOIA. This office has previously determined that "arrestees are considered 'essentially public personages' with a 'limited' and 'qualified' right to privacy, 'and the basic facts which identify them and describe generally the investigations and their arrests become matters of legitimate public interest' that are subject to disclosure." Ill. Att'y Gen. Pub. Acc. Op. No. 12-006, issued March 16, 2012, at 7 (citing *Tennessean Newspaper, Inc. v. Levi*, 403 F. Supp. 1318, 1321 (D.C. Tenn. 1975)).

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There is also a strong public interest in information that sheds light on the manner in which public officials perform their duties. *See Ill. Att'y Gen. Pub. Acc. Op. No. 12-006*, issued March 16, 2012. Thus, section 7(1)(c) expressly provides that "the disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy."

Mr. Noonan was employed by the Tinley Park fire department. Mr. Pratt contends that the report contains information that relates to the public duties of Mr. Noonan, in that the events described in the incident report occurred at a Village fire station and led to Mr. Noonan's termination for violating the Village's employment policies on harassment and workplace violence. The Village's response concedes that the incident was work-related, noting that the report was part of a disciplinary investigation against Mr. Noonan. This office's review of the report confirms that the 2011 incident occurred at a Tinley Park fire station, involved at least one on-duty firefighter, and that information contained in the report does bear upon Mr. Noonan's public duties. Therefore, disclosure of the report would not constitute an unwarranted invasion of Mr. Noonan's personal privacy under the plain language of section 7(1)(c) of FOIA.

To the extent that the victim's right to privacy may be at issue in the release of the December 11, 2011, report, the Village may withhold information that would "unavoidably disclose the identity of * * * persons who file complaints with * * * law enforcement under section 7(1)(d)(iv) of FOIA. Therefore, the Village may redact information from the report that identifies the victim and his or her relationship to the arrestee. Moreover, on October 2, 2013, a representative of this office spoke with Mr. Pratt, who confirmed that he does not object to the redaction of the alleged victim's name.

Under section 7(1)(b) of FOIA (5 ILCS 140/7(1)(b), the Village may also partially redact the report to protect private information, which is defined as "unique identifiers, including a person's social security number, driver's license number * * * home or personal telephone numbers" and "includes home address and personal license plates, *except as otherwise provided by law.*" 5 ILCS 140/2(c-5) (West 2012) (Emphasis added.) Because section 2.15 otherwise provides that an arrestee's home address must be released, the Village may not redact that information.

2010 Incident Report

The 2010 incident report pertains to an unrelated investigation of allegations of domestic battery, theft and criminal damage to property in which Mr. Noonan was the complainant. The incident occurred on private property and did not relate to the public duties of public employees. This office has previously determined that domestic disturbances are highly personal by their nature. *See Ill. Att'y Gen. PAC Pre-Auth. al16019, issued August 23, 2011; see*

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also Ill. Att'y Gen. PAC Pre-Auth. al15532, issued August 3, 2011. However, as discussed above, the Village is required under section 2.15(a) of FOIA to disclose information relating to the person arrested as a result of the complaint, including the name, age, address, charges, time and location of arrest, name of investigating agency, any bail or bond information and incarceration information, unless excepted under section 2.15(c). *See* Ill. Att'y Gen. PAC Pre-Auth. al15488, issued August 2, 2011, at 2 (approving withholding of domestic disturbance report under section 7(1)(c) but noting that arrests require certain disclosures).

The 2008 Incident Report

The 2008 report details an incident concerning a juvenile. This office has reviewed the report, in which no crime was alleged and no arrests were made. The information contained in the report is highly personal, and the General Assembly has determined that the privacy rights of juveniles are to be scrupulously protected, except in very limited circumstances. *See, i.e.*, 705 ILCS 405/1-7(C) (West 2012). The privacy rights of the juvenile, as well as Mr. Noonan, who was not engaged in the performance of his official duties at the time, outweigh any legitimate public interest in disclosure of the report. Thus, the Village properly withheld this report pursuant to section 7(1)(c) of FOIA. *See* Ill. Att'y Gen. PAC Pre-Auth. al15194, issued July 8, 2011 (approving withholding of highly personal police reports not involving the requester or the arrests of any parties).

The Incident Dispatch Detail Report

Likewise, the incident dispatch detail report documents no alleged crime, no arrest, and no suspect. Information in this report is highly personal, and Mr. Noonan's right to privacy outweighs any legitimate public interest in disclosure. Accordingly, we conclude that this report is exempt from disclosure pursuant to section 7(1)(c) of FOIA.

Section 7(1)(a) of FOIA

The Village's response to this office also asserts the records fall within the scope of section 7(1)(a) of FOIA (5 ILCS 140/7(1)(a) (West 2012)), which exempts from disclosure "[i]nformation specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law." However, neither the Village's denial letter to Mr. Pratt nor its response to this office identified any federal or state law, rule or regulation that specifically prohibits disclosure of the records in question. The Village's response to this office does, however, refer to "limited medical information in the reports"⁴ in support of its 7(1)(a)

⁴Letter from Thomas M. Melody, Klein, Thorpe and Jenkins, Ltd., to Rob Olmstead, Assistant Attorney General, Public Access Bureau (August 26, 2013).

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exemption. Presumably, the Village is referring to the Health Information Portability and Accountability Act (HIPAA) (42 U.S.C. §§ 1320d through 1320d-0 (2012)). HIPAA, however, prohibits the release of medical information only by "covered entities" such as health plans, health care clearinghouses, and qualified health care providers. *Coy v. Washington County Hospital District*, 372 Ill. App. 3d 1077, 1081 (5th Dist., 2007) (citing 45 C.F.R. §§ 160.102(a), 160.103 (2002)); *see also People v. Bauer*, 402 Ill. App. 3d 1149, 1158 (5th Dist. 2010) (holding that "law enforcement agencies * * * are not covered entities under HIPAA."); Ill. Att'y Gen. PAC Req. Rev. Ltr. 19519, issued October 12, 2012, at 3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 11601, issued May 11, 2011. Thus, this office concludes that the Village has not sustained its burden of demonstrating that the records are exempt from disclosure pursuant to section 7(1)(a) of FOIA.

Section 7(1)(n) of FOIA

Lastly, the Village contends in its response to this office that the incident reports are exempt under section 7(1)(n) of FOIA (5 ILCS 140/7(1)(n) (West 2012)) because they "were part of internal disciplinary investigations."⁵ Section 7(1)(n) exempts from disclosure "records relating to a public body's adjudication of employee grievances or disciplinary cases." This office has previously determined that police incident reports "exist independently of any internal investigation and do not become adjudicatory simply because they are relied upon by the public body during the course of its [disciplinary] investigation." Ill. Att'y Gen. Pub. Acc. Op. No. 13-011, issued June 11, 2013, at 8. Because the police incident reports were generated independently and prior to any adjudication that may have occurred, we conclude that those reports are not exempt from disclosure under section 7(1)(n).

CONCLUSION

The Village must release the 2011 incident report, subject only to appropriate redactions under section 7(1)(b) of FOIA and the redaction of the victim's name any other information identifying the victim pursuant to section 7(1)(d)(iv). The Village must also release the arrestee information in the 2010 incident report as required by section 2.15 of FOIA.

⁵Letter from Thomas M. Melody, Klein, Thorpe and Jenkins, Ltd., to Rob Olmstead, Assistant Attorney General, Public Access Bureau (August 26, 2013).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter shall serve to close this matter.

Very truly yours,

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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